

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

PUBLIC NOTICE

**INVITATION FOR COMMENTS ON REVISED LOCAL BANKRUPTCY RULE 3015-2
AND NEW BANKRUPTCY RULE 6004-3**

Comments are invited on a proposed revision to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of Virginia, as follows:

1. A revision to Local Bankruptcy Rule 3015-2; and
2. Adoption of new Local Bankruptcy Rule 6004-3.

The proposed revision to the Local Bankruptcy Rules is available at the Alexandria, Norfolk, Richmond and Newport News divisions of the Court and may be accessed at the Court's Internet website:

<http://www.vaeb.uscourts.gov> under "Local Rules" > "Public Notice".

Comments may be submitted, by mail, to:

Local Rule Change
c/o William C. Redden
U.S. Bankruptcy Court
1100 East Main Street, Room 310
Richmond, VA 23219-3515

or, by e-mail, at:

Localrules@vaeb.uscourts.gov

Comments will be received by mail or at the Court's website until 5:00 p.m., Friday, July 29, 2005.

Proposed new language is underlined and deleted language is struck through in the attached proposed revision to the Local Bankruptcy Rules.

Dated: June 29, 2005

William C. Redden
Clerk of Court

PROPOSED REVISION

to the

LOCAL BANKRUPTCY RULES
(Version 6/22/05)

UNITED STATES BANKRUPTCY COURT
for the
EASTERN DISTRICT OF VIRGINIA



Effective October 17, 2005

RULE 3015-2 CHAPTER 13 PLAN REQUIREMENTS

(A) **Form of Plan; Inclusion of related motions:** The only acceptable form for a Chapter 13 plan shall be that form approved by the Court (Exhibit 1 to these Local Bankruptcy Rules) and available from the Clerk's Office upon request or from the court's Internet web site, www.vaeb.uscourts.gov. Counsel are encouraged, however, to delete the text of inapplicable sections from the plan provided that the section numbering and section headings are retained, followed by an appropriate notation such as "None" or "Not Applicable". If applicable, and without prejudice to a debtor's right to file a stand-alone motion seeking the same relief, the plan shall include the following related motions:

(1) **Motion for Determination of Value Pursuant to 11 U.S.C. § 506(a).**

(2) **Motion for Lien Avoidance Pursuant to 11 U.S.C. § 522(f).** (Lien avoidance under any other provision of the Bankruptcy Code must be by separate adversary proceeding and requires service of a summons and complaint.)

(3) **Motion for Assumption or Rejection of Executory Contracts Pursuant to 11 U.S.C. § 365.**

(B) **Special Notice to secured creditors whose collateral is to be valued or lien avoided.** Unless a stand-alone motion and appropriate notice is served on the affected creditor at the same time as the plan is filed with the clerk and transmitted to creditors, the debtor shall serve on each creditor who is the subject of an included motion for valuation under 11 U.S.C. §506(a) or an included motion for lien avoidance under 11 U.S.C. §522(f) a copy of the plan to which is attached a notice in the form approved by the Court (Exhibit 2 to these Local Bankruptcy Rules). Service of the plan and special notice must be made in the manner provided for in Rule 7004, Fed.R.Bankr.P.

(C) **Distribution of Chapter 13 Plan and Related Motions.** The debtor shall distribute a copy of the original and any modified Chapter 13 Plan and Related Motions to all creditors, the standing trustee, and other parties in interest at or prior to the time it is filed with the court and shall contemporaneously serve on affected creditors the special notice required by paragraph (B) of this rule.

(D) **Objections to Confirmation of Original Chapter 13 Plan or to Related Motions.**

(1) **Deadline for Filing:** Any objection to confirmation of the Chapter 13 Plan or to the granting of any included Motion for Determination of Value, Motion for Lien Avoidance, or the Motion to Assume or Reject Executory Contract or Unexpired Lease shall be filed not later than thirty (30) days after the filing of the Chapter 13 Plan and Related Motions, or fifteen (15) days after the conclusion of the meeting of creditors, whichever is later. If an unconfirmed case has been dismissed within the objection period and then later reinstated, any objecting

party shall have an additional thirty (30) days from the entry of the order reinstating the case to file an objection to the original plan.

(2) **Service of objection:** The objecting party shall file an original objection with the Court and serve copies on the standing trustee, the debtor, and the debtor's attorney. The objection shall be accompanied by proof of service evidencing compliance with this requirement.

(3) **Hearings on objections:** All timely filed objections shall be heard at the confirmation hearing as set forth in the notice of meeting of creditors.

(E) **Confirmation of Plan and Granting of Related Motions without a hearing.** After the time for filing objections has passed and if no objection has been timely filed, the Court may enter an order confirming the plan and granting the relief sought in the related motions without holding a hearing, or the Court may direct that a hearing be held.

(F) **Filing of Original Chapter 13 Plan and Related Motions**

(1) **Requirement.** The Chapter 13 Plan and Related Motions and any special notice to secured creditors required by this rule shall be filed with the clerk not later than fifteen (15) days after the commencement of the case if the case was originally filed under chapter 13, or 15 days after the order converting the case to chapter 13 from some other chapter.

(2) **Proof of Service to include names and addresses of all parties served.** The Chapter 13 Plan and Related Motions must contain a proof of service setting forth the date and manner of service and the names and addresses of all parties to whom the plan was mailed or transmitted.

(3) **Extension of Time to File Chapter 13 Plan and Related Motions**

(a) A motion to extend the time to file a Chapter 13 Plan and Related Motions may be granted by the clerk to the date that is no later than the fourth business day prior to the meeting of creditors, if

(i) the motion for extension has been filed before the initial due date has expired;

(ii) notice of the motion has been given by the debtor to the trustee and all creditors; and

(iii) no objection has been filed within 10 days of the mailing of the notice.

(b) Any motion that is filed after the due date or that seeks an extension of time beyond the dates specified in subparagraph (F)(3)(a) of this rule shall be noticed for a hearing before the judge assigned to the case.

(G) **Modified Chapter 13 Plan and Related Motions**

(1) **Time for filing where no plan has been confirmed.** Unless confirmation of a prior plan has been denied, a modified plan may be filed at any time prior to confirmation. If confirmation of a prior plan has been denied, a modified plan must be filed within the period stated in paragraph (H)(3) of this rule unless the order denying confirmation states some other period.

(2) **Procedure where no plan has been confirmed.** If a modified Chapter 13 Plan and Related Motions is filed at least 30 days prior to the original confirmation hearing date, any objections must be filed no later than the fifth business date prior to the hearing, or 30 days after filing of the modified Chapter 13 Plan and Related Motions, whichever is earlier. If a modified Chapter 13 Plan and Related Motions is filed less than 30 days prior to the original confirmation hearing date, the debtor must obtain a new confirmation hearing date from the clerk that will allow at least 30 days notice and shall give the trustee and all creditors notice of the date, time, and place of the confirmation hearing. The modified Chapter 13 Plan and Related Motions, and any special notice required by paragraph (B) of this rule, must be distributed and served in the same manner as the original plan. The special notice required by paragraph (B) of this rule need not be given, however, if an order has previously been entered granting the relief sought and the modified plan does not contain any provision inconsistent with the order previously entered.

(3) **Procedure where plan has been confirmed.**

(a) **Where modification is requested by the trustee or a creditor.** If modification of a confirmed plan is sought by the trustee or by a creditor, modification must be requested by motion. A hearing date shall be obtained from the clerk, and at least 20 days notice of the hearing shall be given to the debtor, debtor's counsel, the trustee (if the trustee is not the movant), and all creditors. The time for filing any response is governed by LBR 9013-1(H)(3).

(b) **Where modification is requested by the debtor.** If modification of a confirmed plan is sought by the debtor, modification must be requested by filing and distributing a modified Chapter 13 Plan and Related Motions and by giving any special notice required by paragraph (B) of this rule. The special notice required by paragraph (B) of this rule need not be given, however, if a Chapter 13 Plan and Related Motions has previously been confirmed providing the identical treatment of the secured creditor's claim. The debtor must obtain a confirmation hearing date from the clerk that will allow at least 30 days notice and shall give the trustee and all creditors notice of the date, time, and place of the confirmation hearing. Any objection to the modified plan must be filed not later than 30 days from the date the modified Chapter 13 Plan and Related Motions was filed.

(H) Dismissal of Case for Failure to Timely File or Distribute Plan and Notice, Except as Provided in LBR 1017-3

(1) Clerk to Issue. Except as provided in LBR 1017-3, the Clerk shall issue an order of dismissal in any chapter 13 case not meeting the timeliness of filing requirements of paragraphs B, C, or F of this Local Bankruptcy Rule.

(2) Notice of Possible Dismissal. The Clerk shall give notice of this Local Bankruptcy Rule to the debtor or debtor's counsel at the time the petition is filed. The Clerk shall also give notice of this Local Bankruptcy Rule in the notice of meeting of creditors.

(3) Dismissal of Case upon Denial of Confirmation. Except as provided in LBR 1017-3, if the Court denies confirmation of the debtor's original or subsequently modified Chapter 13 Plan and Related Motions, unless the Court has entered an order previously confirming a plan, the Clerk is directed to issue an order dismissing the chapter 13 case unless, within twenty (20) days after denial of confirmation:

(a) the debtor files a new Modified Chapter 13 Plan and Related Motions;

(b) the debtor converts or moves to convert the case to another chapter of the Bankruptcy Code;

(c) the debtor files a motion for reconsideration or appeals the denial of confirmation; or

(d) the Court otherwise orders.

An order previously entered by the Court confirming a Chapter 13 Plan shall remain in full force and effect if a subsequently modified Chapter 13 Plan and Related Motions is denied confirmation by the Court.

Comments

Rule 3015-2 Revised Chapter 13 Form Plan:

Since February 15, 1988, the Eastern District of Virginia has required that chapter 13 plans follow a prescribed format. See *In re Walat*, 87 B.R. 408 (Bankr.E.D. Va 1988) (*en banc*), *aff'd* 89 B.R. 11 (E.D. Va. 1988). Following the Fourth Circuit's decisions in *Piedmont Trust Bank v. Linkous (In re Linkous)*, 990 F.2d 160 (4th Cir. 1993) and *Cen-Pen Corp. v. Hanson*, 58 F.3d 89 (4th Cir. 1995), the form plan was expanded to include "related" motions to value collateral and avoid liens, and a separate "Notice of Chapter 13 Plan and related Motions" was adopted for service on creditors in addition to the plan itself.

In 2003, the National Association of Chapter 13 Trustees recommended a model form of chapter 13 plan which had been drafted at an Advanced Practice Institute by a group of debtors' counsel, trustees, creditors' representatives, attorneys and others. After the chapter 13 trustees in the Western District of Virginia proposed a variant of this model plan for adoption in that district, a working group of one judge and one chapter 13 trustee from each district proposed further modifications that would allow the same form of plan to be used in each district. After a period of public comment and a trial use of the model plan at a Virginia CLE Advanced Consumer Bankruptcy Seminar, a redrafted proposal was prepared by the chapter 13 trustees of both districts. This proposal, with some minor changes agreed to by the judges of both districts at two joint meetings, resulted in the current plan.

Adoption of a uniform plan is expected to benefit state-wide and national creditors (who would have only one form of plan from Virginia to decipher) as well as attorneys who practice in both districts and would no longer have to separately configure their form preparation software for each district. Because it is shorter than the existing Eastern District of Virginia plan, it should also be significantly easier for *pro se* parties (many of whom struggle with the current form of plan) to fill out.

The revised plan, like the previous plan, incorporates "related" motions to value collateral and avoid liens. To satisfy the due-process concerns in *Linkous* and *Cen-Pen*, a separate "special" notice must be attached to the copy of the plan mailed to the creditors that are the subject of those motions. [Rule effective 10/17/05.]

EDITOR'S NOTE: Given the substantial reorganization of and the inclusion of new text within this revised Local Bankruptcy Rule, the entire rule has been underlined, for the sake of clarity and ease of reading, rather than including struck-through text that has been deleted.

RULE 6004-3 SALE OR REFINANCE OF PROPERTY BY CHAPTER 13 DEBTOR AFTER CONFIRMATION

(A) A debtor seeking approval for the sale or refinance of real property following confirmation of a plan that reverts such property in the debtor shall provide the chapter 13 trustee and all creditors and parties in interest at least 20 days notice of the motion seeking such approval unless the notice period has been shortened by the court for cause shown.

(B) In addition to setting forth the information required by Rule 2002(c)(1), Fed.R.Bankr.P. the notice shall state:

(1) the total proposed sale price or maximum amount to be secured by the refinancing, as the case may be, and, in the case of refinancing, the amount of existing secured debt to be paid thereby;

(2) the amount of the sale or loan proceeds to be applied to the debtor's obligations under the confirmed plan;

(3) whether such payment will result in full payment of all secured claims; and

(4) if all allowed claims will not be paid in full, the amount of the sale or loan proceeds that will be paid to the debtor.

C. If no objection is filed within the objection period, the court, in its discretion, may enter an order endorsed by the chapter 13 trustee approving the sale or refinance without holding a hearing.

Comments

6004-3 [New Rule effective 10/17/05.]